IN THE

SUPREME COURT OF MISSOURI

No. SC84092

STATE OF MISSOURI, ex rel. SSM HEALTH CARE ST. LOUIS,

Relator,

v.

MARGARET M. NEILL, Circuit Court Judge,

Twenty-Second Judicial Circuit, Missouri,

Respondent

BRIEF OF MISSOURI ASSOCIATION OF TRIAL ATTORNEYS

AS *AMICUS CURIAE*

MISSOURI ASSOCIATION OF TRIAL ATTORNEYS
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INTEREST OF *AMICUS CURIAE* MISSOURI ASSOCIATION OF TRIAL ATTORNEYS

The Missouri Association of Trial Attorneys (MATA) is a professional organization of approximately 1,400 trial lawyers in Missouri who represent Missouri citizens in tort litigation against incorporated and unincorporated business entities and individuals who reside both inside and outside the State of Missouri. The consistent, logical and orderly application of the Missouri Rules of Civil Procedure and Missouri statutes which govern the conduct of litigation in the State of Missouri benefits all litigants. In contrast, application of the rules and statutes of this State in a manner which favors one class of parties over another by constricting operation of the venue statutes contrary to the historical context in which those statutes have been constructed by this Court creates a dangerous precedent that undermines the rights of the Missouri citizens that the members of MATA represent.

Since the predecessor of the corporate venue statute was first enacted in 1845, the development of the statute has displayed a consistent pattern of broadly subjecting corporations to suit. Today, not-for-profit corporations are broadly subject to venue wherever they such corporations do business when sued with other corporate defendants. Under the rule proposed by relator SSM Health Care St. Louis, not-for-profit corporations would be subject to venue only at the location of their principal place of business or registered agent when joined as a defendant with an individual. Many not-for-profit corporations do business in various locations throughout the State of Missouri while maintaining a registered agent in another location. The registered agent often has little, if anything, to do with the operation of the corporation's business and is frequently nothing more than a corporation organized solely for the purpose of receiving service of process on behalf of various corporations. The

rule proposed by relator SSM Health Care St. Louis is based on abrogated precedent and repealed statutes, is neither logical nor based on generally accepted rules of statutory construction or legislative intent, and circumvents established Missouri public policy to the detriment of Missouri citizens.

On behalf of the citizens of the State of Missouri, MATA urges this Court take action to permit not-for-profit corporations to be subject, rather than avoid, litigation in venues where such corporations maintain offices for the transaction of their ordinary and usual business. Adoption of the rule put forth by relator SSM Health Care St. Louis would be to the detriment of the rights of Missouri citizens in those cases in which a not-for-profit corporation is sued with an individual.

JURISDICTIONAL STATEMENT

Amicus Curiae, the Missouri Association of Trial Attorneys, hereby adopts and incorporates by reference the Jurisdictional Statement contained in the Brief of Respondent.

STATEMENT OF FACTS

Amicus Curiae, the Missouri Association of Trial Attorneys, hereby adopts and incorporates by reference the Statement of Facts contained in the Brief of Respondent.

POINTS RELIED ON

I. **THE NOT-FOR-PROFIT CORPORATION SPECIAL VENUE STATUTE IS ONLY APPLICABLE WHEN A NON-FOR-PROFIT CORPORATION IS THE SOLE DEFENDANT. BECAUSE THE NOT-FOR-PROFIT CORPORATE DEFENDANT HAS BEEN JOINED WITH AN INDIVIDUAL DEFENDANT IN THE UNDERLYING SUIT, THIS COURT SHOULD NOT APPLY THE NOT-FOR-PROFIT CORPORATION SPECIAL VENUE STATUTE.**

State ex rel. Smith v. Gray, 979 S.W.2d 190 (Mo.banc 1998)

State ex rel. Steinhorn v. Forder, 792 S.W.2d 51 (Mo.App.E.D. 1990)

State ex rel. Linthicum v. Calvin, 57 S.W.3d 855 (Mo.banc 2001)

Section 508.010(2) R.S.Mo. (2000)

Section 355.176(4) R.S.Mo. (2000)

II. **PURSUANT TO THIS COURT'S PRIOR HOLDINGS, THE GENERAL VENUE STATUTE SHOULD GOVERN IN THE UNDERLYING SUIT BECAUSE A CORPORATION HAS BEEN JOINED WITH AN INDIVIDUAL DEFENDANT. FURTHERMORE, IN THE ABSENCE OF A SPECIFIC STATUTE DEFINING THE RESIDENCE OF A NOT-FOR-PROFIT CORPORATION, THIS COURT SHOULD LOOK TO THE COMMON LAW DEFINITION OF CORPORATE RESIDENCE, WHICH DEEMS THE RESIDENCE OF A CORPORATION TO BE IN ANY COUNTY WHERE SUCH CORPORATION MAINTAINS AN OFFICE OR AGENT FOR THE TRANSACTION OF ITS USUAL AND CUSTOMARY BUSINESS.**

State ex rel. Rothermich v. Gallagher, 816 S.W.2d 194 (Mo.banc 1991)

State ex rel. Smith v. Gray, 979 S.W.2d 190 (Mo.banc 1998)

State ex rel. Henning v. Williams, 131 S.W.2d 561 (Mo.banc 1939)

Section 508.010(2) R.S.Mo. (2000)

Section 355.170 R.S.Mo. (1991)

III. **PUBLIC POLICY FAVORS A CONSISTENT APPLICATION OF MISSOURI'S GENERAL VENUE STATUTE. UNDER THE STATUTE, WHEN THERE ARE MULTIPLE DEFENDANTS RESIDING IN DIFFERENT COUNTIES, VENUE IS PROPER IN ANY SUCH COUNTY. THEREFORE, RESPONDENT'S ORDER DENYING RELATOR SSM'S MOTION TO TRANSFER SHOULD BE REINSTATED BECAUSE UNDER A CONSISTENT APPLICATION OF THE STATUTE, VENUE IN THE UNDERLYING SUIT IS PROPER.**

State ex rel. Rothermich v. Gallagher, 816 S.W.2d 194 (Mo.banc 1991)

State ex rel. Malone v. Mummert, 889 S.W.2d 823 (Mo.banc 1994)

ARGUMENT

I. THE NOT-FOR-PROFIT CORPORATION SPECIAL VENUE STATUTE IS ONLY APPLICABLE WHEN A NOT-FOR-PROFIT CORPORATION IS THE SOLE DEFENDANT. BECAUSE THE NOT-FOR-PROFIT CORPORATE DEFENDANT HAS BEEN JOINED WITH AN INDIVIDUAL DEFENDANT IN THE UNDERLYING SUIT, THIS COURT SHOULD NOT APPLY THE NOT-FOR-PROFIT CORPORATION SPECIAL VENUE STATUTE.

Missouri courts have long recognized that when a corporation and an individual are joined as defendants, section 508.010 is the governing statute.[1] "When individuals and corporations are sued in the same suit, section 508.010(2) governs . . . ." State *ex rel.* Smith v. Gray, 979 S.W.2d 190, 191 (Mo. banc 1998). Even when presented with the fact that the corporate defendant is a not-for-profit corporation, Missouri courts have not wavered in their application of section 508.010. State *ex rel.* Steinhorn v. Forder, 792 S.W.2d 51 (Mo.App. E.D. 1990).

In Steinhorn, suit was brought against a not-for-profit corporation and an individual defendant. The court held that "[v]enue in this type of action, wherein an individual and a corporation are defendants, is governed by [section] 508.010." Steinhorn, 792 S.W.2d at 53. Despite such a clear

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[1] *See generally*, State *ex rel.* O'Keefe v. Brown, 235 S.W.2d 304 (Mo. banc 1951) (involving a domestic business corporation); State *ex rel.* Bowden v. Jensen, 359 S.W.2d 343 (Mo. banc 1962) (involving a foreign business corporation); State *ex rel.* Rothermich v. Gallagher, 816 S.W.2d 194 (Mo. banc 1991) (involving a foreign insurance corporation); State *ex rel.* Smith v. Gray, 979 S.W.2d 190 (Mo. banc 1998) (involving a domestic insurance corporation).

affirmation by the Steinhorn decision that section 508.010 is the applicable venue statute in the underlying suit, Relator argues that section 355.176 should govern. As support for its argument, Relator looks to other "special" and "mandatory" venue statutes; Relator never once mentions or argues against the precedent already established in Steinhorn. All of the other "special" venue statutes relied upon by Relator, though, can be distinguished from the not-for-profit corporation venue statute – section 355.176.

First, Relator references section 508.060, which provides that "[a]ll actions *whatsoever* against any county shall be commenced in the circuit court of such county . . . ." R.S.Mo. § 508.060 (2000) (emphasis added). Relator then mentions section 508.050, which provides that "[s]uits against municipal corporations as defendant *or co-defendants* shall be commenced only in the county in which the municipal corporation is situated." R.S.Mo. § 508.050 (2000) (emphasis added).

Looking at both of the "special" and "mandatory" venue statutes cited by Relator, neither is analogous to the not-for-profit corporation venue statute. The "whatsoever" language in section 508.060 means that such statute applies in any and all cases where a county defendant is involved in the suit. Section 508.050, on the other hand, incorporates the "co-defendants" language with respect to suits against municipal corporations. Such language means that section 508.050 applies regardless of whether the defendant municipal corporation is the sole defendant or joined with other individual or non-corporate defendants.

"The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and

ordinary meaning." State *ex rel*. Linthicum v. Calvin, 57 S.W.3d 855, 857-58 (Mo. banc 2001). The "whatsoever" and "co-defendants" language present in sections 508.060 and 508.050 serves as the foundation for application of the mandatory nature of such statutes in multiple circumstances, including the presence of other defendants. Section 355.176.4, however, while indeed mandatory, only applies in the circumstance that the not-for-profit corporate defendant is the sole defendant.

Because section 355.176.4 fails to contain any language even remotely analogous to the "whatsoever" and "or co-defendant" language of sections 508.060 and 508.050, section 355.176.4 fails to provide for the mandatory nature of the statute to take effect in other circumstances, such as when the not-for-profit corporate defendant is joined with an individual. R.S.Mo. § 355.176.4 (2000) (reading in pertinent part: "[s]uits against *a* nonprofit corporation . . . .") (emphasis added). Had the legislature intended for section 355.176.4 to apply in instances where a not-for-profit corporation was joined with an individual defendant, the legislature would have included the "whatsoever" or "co-defendant" language authorizing such.

Relator's reliance on the "shall" and "only" language present in section 355.176.4 and in the other "mandatory" venue statutes – sections 508.060 and 508.050 – is misplaced because the mandatory nature of those statutes applies in multiple circumstances due to the presence of other language in the statutes, i.e. "whatsoever" and "co-defendants". Section 355.176.4 is a "special" venue statute, mandating the appropriate venue with respect to not-for-profit corporations only in a specific situation. Furthermore, Relator's argument in favor of having section 355.176.4 trump section 508.010 ignores the numerous cases decided by the Supreme Court of Missouri that have applied the

general venue statute when the defendants were any number of a variety of types of corporations and individuals.[2]

II. PURSUANT TO THIS COURT'S PRIOR HOLDINGS, THE GENERAL VENUE STATUTE SHOULD GOVERN IN THE UNDERLYING SUIT BECAUSE A CORPORATION HAS BEEN JOINED WITH AN INDIVIDUAL DEFENDANT. FURTHERMORE, IN THE ABSENCE OF A SPECIFIC STATUTE DEFINING THE RESIDENCE OF A NOT-FOR-PROFIT CORPORATION, THIS COURT SHOULD LOOK TO THE COMMON LAW DEFINITION OF CORPORATE RESIDENCE, WHICH DEEMS THE RESIDENCE OF A CORPORATION TO BE IN ANY COUNTY WHERE SUCH CORPORATION MAINTAINS AN OFFICE OR AGENT FOR THE TRANSACTION OF ITS USUAL AND CUSTOMARY BUSINESS.

"[T]he legislature's desire to make residency determinative is evident from section 508.010's use of residency as a key factor in determining venue." State *ex rel*. Linthicum v. Calvin, 57 S.W.3d 855, 864 (Mo. banc 2001) (Stith, J., concurring). Thus, there exists a fundamental question when

[2] *See generally*, O'Keefe, 235 S.W.2d 304; State *ex rel*. Whiteman v. James, 265 S.W.2d 298 (Mo. banc 1954); Bowden, 359 S.W.2d 343; State *ex rel*. Dick Proctor Imports, Inc. v. Gaertner, 671 S.W.2d 273 (Mo. banc 1984); Rothermich, 816 S.W.2d 194; State *ex rel*. DePaul Health Center v. Mummert, 870 S.W.2d 820 (Mo. banc 1994); Smith, 979 S.w.2d 190.

operating under section 508.010(2): What is the residence of a corporation for venue purposes when both a corporation and an individual are joined as defendants?

When the corporate defendant under section 508.010 is a domestic general business corporation, section 351.375(2) has been held to provide for the exclusive residence of the corporation. *See generally*, O'Keefe, 235 S.W.2d 304. Section 351.375(2) provides:

> The location or residence of any corporation shall be deemed for all purposes to be in the county where its registered office is maintained.

R.S.Mo. 351.375(2) (2000) (emphasis added). Yet, section 351.375(2) does not apply to not-for-profit corporations because "[n]o provisions of [chapter 351] . . . shall be applicable to . . . nonprofit corporations; . . . ." R.S.Mo. § 351.690(3) (2000) (emphasis added). Instead, chapter 355 is the applicable chapter for not-for-profit corporations. *See* R.S.Mo. § 355.020 (2000).

Prior to 1994, chapter 355 contained a provision identical to section 351.375(2).[3] In 1990, the court in Steinhorn relied on the residence provision of section 355.170.1(2) to locate the residence of the not-for-profit corporation in the county where its registered office was maintained. 792 S.W.2d at 53. In 1994, however, the General Assembly repealed section 355.170.1(2) and enacted section 355.161 in its place. Section 355.161 makes no provision regarding the residence of a not-for-profit corporation. *See* R.S.Mo. § 355.161 (2000).

Relator argues that in the absence of a statute defining residence, this Court should look to other statutes within chapters 351 and 355 for guidance. Basically, Relator argues that even though a specific

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[3] "The location or residence of any corporation shall be deemed for all purposes to be in the county where its registered office is maintained." R.S.Mo. § 355.170.1(2) (1991) (repealed 1994).

statute defining the residence of a not-for-profit corporation has been repealed, this Court should look to the implicit nature of other statutes to locate the residence of such a corporation in the exact location as was previously explicitly provided for by statute. Such an argument is incongruous. "The primary rule of statutory construction is to ascertain the intent of the legislature from the language used . . . ." Linthicum, 57 S.W.3d at 857-58. In repealing section 355.170.1(2), the legislature no longer intended for the residence of a not-for-profit corporation to be located in the county of its registered office.[4]

Relator also notes in the same footnote that this Court should be persuaded by State *ex rel.* Vaughn v. Koehr, a case that involved section 355.170.1(2). 835 S.W.2d 543 (Mo.App. E.D. 1992). In Vaughn, the defendants were a not-for-profit corporation and a general business corporation. The court in Vaughn held, however, that when a not-for-profit corporation and a general business corporation are joined as defendants, section 508.040 (the corporate venue statute) applies and the not-for-profit corporation can be sued in any county where it maintains an office or agent for the transaction of its usual and customary business. 835 S.W.2d at 544. The court in Vaughn chose to

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[4] Relator argues in a footnote that this Court should be persuaded by the Steinhorn decision, which held that the residence of a not-for-profit corporation was in the county where it maintained its registered office pursuant to section 355.170.1(2). The foundation for the residence aspect of Steinhorn, however, was removed when section 355.170.1(2) was repealed in 1994. Thus, although Steinhorn still speaks to section 508.010 governing in the instance when a not-for-profit corporation and an individual are joined as defendants, Steinhorn no longer speaks to where the residence of such a corporation should be located.

ignore section 355.170.1(2) when faced with only corporate defendants. As Judge Lawrence Mooney observed in the proceedings below:

> "It is difficult to conceive why the legislature would repeal an explicit statute, yet seek to void its repeal by mere implication . . . ."

In the absence of a specific statute defining the residence of a not-for-profit corporation, this Court should look instead to the common law definition of corporate residence. This Court has previously undertaken such an approach with respect to insurance corporations. "Since Chapter 351 excludes insurance corporations from applicability, the definition of residence for business corporations taken from [section 351.375] has been found to be inapplicable to insurance corporations." State *ex rel*. Rothermich v. Gallagher, 816 S.W.2d 194, 198 (Mo. banc 1991).

In Rothermich, the Supreme Court of Missouri defined a foreign insurance corporation's residence for purposes of venue under section 508.010. Under the general venue statute, the Court held the residence of a foreign insurance corporation is any place the insurance corporation keeps an office or agent for the transaction of its usual and customary business. Rothermich, 816 S.W.2d at 200. The Court explained its holding by stating:

> Athough cases have noted no distinction between business corporations and insurance corporations under the venue provisions of [section] 508.040, the use of the term 'residence' to determine venue under [section] 508.010(2) was found by courts to create a distinction between a business corporation whose residence was defined by statute and an insurance corporation *whose residence was not.*

Id. at 198 (emphasis added).

In State *ex rel.* Smith v. Gray, 979 S.W.2d 190 (Mo. banc 1998), the Supreme Court of Missouri visited the issue of where a domestic insurance corporation's residence should be located under section 508.010. Once again, the Court noted the absence of a specific statute defining the "residence" of an insurance corporation. And once again, the Court determined that in the absence of a specific statute defining residence, the residence of a domestic insurance corporation is located in any county where the corporation maintains an office or agent for the transaction of its usual and customary business. The Court in Smith cited State *ex rel.* Henning v. Williams, 131 S.W.2d 561 (Mo. banc 1939), for guidance:

> The *Henning* case follows the common law rule that a corporation's 'residence may be wherever its corporate business is done,' that is, 'where its officers and agencies are actually present in the exercise of its franchises and in carrying on its business; and that the legal residence of a corporation is not necessarily confined to the locality of its principal office or place of business.'

979 S.W.2d at 192 (quoting Henning, 131 S.W.2d at 565) (emphasis added); *see also* Rothermich, 816 S.W.2d at 198.

Relator argues that rather than look to the Court's prior decisions regarding insurance corporations, this Court should instead look to State *ex rel.* Bowden v. Jensen, 359 S.W.2d 343 (Mo. banc 1962), for guidance in determining a not-for-profit corporation's residence for purposes of venue. Relator's reliance on Bowden is misplaced, however, because chapter 355 – unlike chapter 351 –

does not define corporate residence. Relator, in a footnote, attempts to unravel Respondent's argument. Relator's brief, p. 31 n. 17.

Such attempt, however, is superfluous because Relator's assertion is just plain wrong that at the time Bowden was decided no statute defined the residence of a foreign corporation. During the era of the Bowden decision, section 351.375 was found to define the residence of a foreign corporation. *See* State *ex rel*. Whiteman v. James, 265 S.W.2d 298, 300 (Mo. banc 1954); Bowden, 359 S.W.2d at 350-51. The Court looked to section 351.375 because at that time, the statute applicable to foreign corporations read as follows:

> A foreign corporation may from time to time change the address of its registered office. A foreign corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, or its registered agent becomes disqualified or incapacitated to act, or if it revokes the appointment of its registered agent. *Any such change either in the registered office or in the registered agent shall be made in the manner as prescribed in section 351.375.*

R.S.Mo. § 351.625 (1949) (repealed 1990) (emphasis added). The Court held that the reference to section 351.375 in the foreign corporation statute meant that a foreign corporation's residence was to be defined by section 351.375. Whiteman, 265 S.W.2d at 300; Bowden, 359 S.W.2d at 350-51.

In 1990, however, the General Assembly repealed the relevant provisions of chapter 351 pertaining to foreign corporations. In regard to section 351.625, section 351.588 was enacted in its place. *See* R.S.Mo. § 351.588 (2000). Section 351.588 contains no language defining the residence

of a foreign corporation or referencing section 351.375. Thus, when the General Assembly enacted section 351.588 in 1990, the legislature not only repealed section 351.625 and its reference to section 351.375, it enacted the provision without any language establishing the residence of a foreign corporation to be "for all purposes" the county in which it maintains its registered office. When the General Assembly repealed section 351.625 and its reference to section 351.375, it also repealed the foundation of the Court's holding in Bowden. Therefore, rather than look to Relator's erroneous reliance on Bowden, this Court should instead look to its prior decisions concerning insurance corporations.

Unlike the foreign corporation at issue in Bowden, which was held to have a statutory residence per another statute's reference to section 351.375, the residence of an insurance corporation is not defined by statute. Hence, the Court's analysis in Rothermich and Smith still holds true today vis-à-vis not-for-profit corporations. The use of the term "residence" in section 508.010 creates a distinction between general business corporations whose residence is defined by statute and not-for-profit corporations whose residence is not defined. Since a not-for-profit corporation's residence is not defined by statute, its residence should be located in any county where it maintains an office or agent for the transaction of its usual and customary business pursuant to Henning and the common law definition of corporate residence.

III. PUBLIC POLICY FAVORS A CONSISTENT APPLICATION OF MISSOURI'S GENERAL VENUE STATUTE. UNDER THE STATUTE, WHEN THERE ARE MULTIPLE DEFENDANTS RESIDING IN DIFFERENT COUNTIES, VENUE IS PROPER IN ANY SUCH

COUNTY. THEREFORE, RESPONDENT'S ORDER DENYING DEFENDANT'S MOTION TO TRANSFER SHOULD BE REINSTATED BECAUSE UNDER A CONSISTENT APPLICATION OF THE STATUTE, VENUE IN THE UNDERLYING SUIT IS PROPER.

"The purpose of venue statutes is to provide a convenient, logical and orderly forum for litigation." Rothermich, 816 S.W.2d at 196. Relator argues that under section 508.010, venue is still improper in the City of St. Louis because the individual defendant is not a resident of the City of St. Louis. Regardless of the residence of the not-for-profit corporation under section 508.010, Relator argues that Plaintiff must show some other "independent" connection to establish venue – for instance, that defendant Nanci J. Bucy, D.O. is also a resident of the City of St. Louis. Simplified, Relator contends that venue cannot be established under section 508.010 solely on the basis of one defendant's residence.

Such a contention by Relator, however, is contrary to the prior holdings of this Court. In fact, multiple holdings by this Court confirm that when section 508.010(2) is the governing venue statute, venue is proper in any county where one of the defendants is found to reside.[5] Specifically, in State *ex rel.* Malone v. Mummert this Court found venue to be proper in the City of St. Louis, which was the residence of only one of the four defendants. 889 S.W.2d 823, 824 (Mo. banc 1994). Even though only defendant was found to reside in the City of St. Louis, this Court nonetheless found venue to be proper under section 508.010(2). Id. at 824-26.

[5] *See generally*, Henning, 131 S.W.2d at 562; O'Keefe, 235 S.W.2d at 305; Bowden, 359 S.W.2d at 345; Rothermich, 816 S.W.2d at 197; Smith, 979 S.W.2d at 191.

Such a contention by Relator also violates the statutory construction of section 508.010. Section 508.010(2) provides:

> When there are several defendants, and they reside in different counties, the suit may be brought in any such county; . . . .

R.S.Mo. § 508.010(2) (2000) (emphasis added). For Relator to argue that both defendants must reside in the same county under section 508.010, Relator is in essence urging this Court to disregard the purpose of venue statutes. This is a dangerous invitation. And one without any support cited by Relator.

Such an argument by Relator is not only illogical, but also inconvenient, disorderly and in contravention with long-standing Missouri public policy. Pursuant to this Court's holding in Rothermich, "it is desirable to arrive at a result where venue is applied more uniformly so that a myriad of venue rules do not exist contributing to and encouraging litigation relating to venue problems." 816 S.W.2d at 200.

CONCLUSION

The not-for-profit corporation venue statute only applies in the instance where a not-for-profit corporation is the sole defendant. When a not-for-profit corporation is joined with an individual defendant, the general venue statute applies. Under section 508.010(2), residence is a determining factor. The residence of a not-for-profit corporation is no longer defined by statute. In the absence of a statute defining residence, a corporation's residence is defined by the common law. In accordance with the common law, suit may be brought in any such county where a corporate defendant resides. And pursuant to the common law definition of corporate residence, a not-for-profit corporation resides for venue purposes in any county where it maintains an office or agent for the transaction of its usual and customary business. Furthermore, to promote articulated Missouri public policy, this Court should not require that both defendants independently

reside in the same county under section 508.010(2).

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CERTIFICATE OF COMPLIANCE WITH MISSOURI SUPREME COURT RULE 84.06(b) AND RULE 84.06(g)

The undersigned certifies that the foregoing brief complies with the limitations contained in Missouri Supreme Court Rule 84.06(b) and, according to the word count function on the word processing program by which it was prepared, contains 4497 words, exclusive of the cover, the Certificate of Service, this Certificate of Compliance, and the signature block.

The undersigned further certifies that the diskette filed herewith containing the Brief of Respondent is electronic form complies with Missouri Supreme Court Rule 84.06(g) because it has been scanned for viruses and its virus-free.

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CERTIFICATE OF SERVICE

A true copy of the foregoing has been served upon all parties by depositing the same in the United States mail, postage pre-paid, this 7th day of March, 2002, addressed to the attorneys of record herein, Mr. Stephen F. Meyerkord and Mr. Matthew J. Devoti, Attorneys at Law, One Metropolitan Square, Suite 3190, St. Louis, Missouri 63102, Mr. Edward M. Goldenhersh and Ms. Jennifer E. Alexander, Attorneys at Law, 10 S. Broadway, Suite 2000, St. Louis, Missouri 63102, and Mr. Paul E. Kovacs and Mr. Timothy Gearin, Attorneys at Law, One Metropolitan Square, Suite 2600, St. Louis, Missouri 63102-2740, and Mr. Robert J. Foley, Attorney at Law, 515 Olive Street, Suite 1700, St. Louis, Missouri 63101 and the Honorable Margaret M. Neill, Presiding Judge, Circuit Court of the City of St. Louis, 10 North Tucker Boulevard, St. Louis, Missouri 63101.